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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	IB Docket No. 95-59
Preemption of Local Zoning	)	DA 91-577
Regulation of Satellite Earth	)	45-DSS-MISC-93
Stations	)	

To: The Commission

REPLY COMMENTS OF PRIMESTAR PARTNERS L.P.

PRIMESTAR Partners L.P. ("PRIMESTAR"), by its attorneys and pursuant to Section 1.419 of the Commission's Rules (47 C.F.R. § 1.419), hereby submits these Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released in the above-captioned proceeding on May 15, 1995.[1]

In the NPRM, the Commission is proposing to modify its current rule, 47 C.F.R. § 25.104, preempting local regulation of satellite earth stations. The Commission proposes to modify the exhaustion-of-remedies requirement and to revise the rule to create a presumption that, with respect to satellite antennas of specified dimensions, any regulation is unreasonable if it substantially limits, or imposes substantial costs on, the use of such antennas.

PRIMESTAR's initial comments in this proceeding endorsed the Commission's proposals and recommended certain modifications to clarify the proposed rules. Comments submitted by other parties

1 FCC 95-59, released May 15, 1995.

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established the negative impact caused by over-burdensome and unnecessary regulation of satellite earth station installations and demonstrated clearly the need for the Commission's proposed rules. At the same time, comments submitted by local authorities and other opponents of the proposed rules demonstrate that there will continue to be excessive and unnecessary local regulation of satellite antennas unless the proposed rules are adopted.

I. The Record Illustrates the Need for the Proposed Rules.

As several commenters clearly illustrate, aggressive and excessive regulation of earth station antenna installations by local authorities continues to be a serious problem. In its comments, the Satellite Broadcasting and Communications Association of America ("SBCA") recounted three incidents that exemplify the burden that overreaching local regulations impose on consumers wishing to employ satellite antennas for television reception. See Comments, SBCA. While the consumers in these examples chose to challenge the burdensome regulations, many similarly situated consumers simply would decide to avoid the hassle and frustration connected with the approval process. In any event, the result is a lessening of the competitive potential of direct-to-home ("DTH") satellite services in the video distribution arena. Comments submitted by Hughes Network Systems, Inc. illustrate the time and expense that must be exerted to challenge overreaching regulations. Such efforts easily can outweigh the benefit of enduring the procedure. As these and other commenters demonstrate, the over-burdensome local

regulations being imposed on consumers establish the need for the Commission's proposed rules.

Even those who oppose the Commission's proposed rules demonstrate, by their comments submitted in this proceeding, that local regulation of satellite antennas, if unchecked, will continue to overburden consumers. For example, comments submitted by the City of Muskegon ("Muskegon") and Michigan and Texas Communities argue that visual blight and decline of property values would be "certain to occur," as a result of antenna installations. These commenters make little distinction between small and large antennas. They evidence a proclivity to regulate, based on an unrealistic presumption that regulation is necessary. See Comments, Muskegon. Further, these and other commenters insist that local authorities are competent and in a better position to determine how best to accommodate community interests and balance the rights of individual consumers to access satellite signals. E.g., Comments, Muskegon, Comments, Michigan and Texas Communities, Comments, Duncan Weinberg Miller & Pembroke, P.C., on behalf of 100 State and Local Government Entities Across the United States ("100 Entities"), Comments, City of Dallas ("Dallas"), Comments, City of Plantation ("Plantation"), and Comments, City of St. Peters ("St. Peters"). Yet, the record is replete with examples of local authorities giving no weight whatsoever to the federal interest in ensuring that consumers have access to competitive DTH providers. Thus, while the opponents of the rules attempt to prove that the Commission's proposed changes are unnecessary, they in fact substantiate the need for the

proposed rules by demonstrating an unwillingness to recognize the federal interest and to mitigate the excessive and burdensome nature of many satellite earth station installation regulations.

II. The Record Demonstrates that Preemption Is Justified with Respect to Satellite Antennas of 1.0 Meters or Less.

Not only does the record justify the applicability of the proposed preemption rules to satellite earth station installations in general, it also clearly affirms the Commission's conclusion that regulation of antennas of 1.0 meter or less is completely unnecessary. Comments submitted by local authorities challenge the proposed rules by emphasizing the health, safety, aesthetic and property value concerns allegedly resulting from unregulated installation, regardless of antenna size. E.g., Comments, Muskegon, Comments, Michigan and Texas Communities, Comments, 100 Entities, Comments, Dallas, Comments, Plantation, Comments, St. Peters. However, these commenters fail to provide any proof or evidence that such concerns apply to antennas of 1.0 meter or less.

On the contrary, the Commission itself recognized that antennas of 1.0 meter or less do not pose aesthetic, safety or property value concerns: "[T]hese antennas do not appear to raise the aesthetic concerns that have prompted many communities to restrict installation of larger antennas. Second, most of these antennas can be installed quickly and inexpensively -- some by the consumer without assistance -- making any permit process particularly burdensome and unnecessary in relation to other equipment and installation costs." NPRM at ¶ 61. Further, at

least with respect to antennas used by PRIMESTAR customers, PRIMESTAR's distributors utilize professional installation which minimizes or eliminates any health or safety concerns. Finally, there is no evidence that satellite receive-only antennas possess any inherent health risk. Thus, since the concerns expressed by local authorities are essentially inapplicable to smaller antennas, there is no need for regulation of antennas of 1.0 meter or less.

Sony Electronics, Inc. ("Sony"), which recently has begun selling a line of small satellite antenna systems for use with the direct broadcast satellite ("DBS") services of DIRECTV and USSB, asserts that the NPRM's preemption should apply only to satellite antennas of 24 inches or less. This argument ignores the current state of industry technology and is little more than a self-serving attempt by Sony to favor its DBS products and services at the expense of competition by PRIMESTAR. While DIRECTV'S and USSB's services can utilize Sony's receive-only satellite antennas which are less than 1.0 meter, PRIMESTAR subscribers use satellite antennas that are somewhat larger, generally up to 1.0 meter in diameter or its equivalent. PRIMESTAR is a principal competitor of DIRECTV and USSB in the DBS service.

Any reduction in the scope of the preemption from 1.0 meter to 24 inches as suggested by Sony would unfairly discriminate against PRIMESTAR's customers and provide its competitors with an unjustified advantage. The negative impact on PRIMESTAR would hinder competition in the DBS service, thereby running contrary to the NPRM's stated intention of fostering competition. PRIMESTAR

is attempting to migrate from medium-power satellites to high-power DBS as soon as possible, and when it does, it will be able to use antennas comparable in size to those being offered by Sony. Until the transition occurs, however, PRIMESTAR should not be handicapped by being excluded from the scope of the presumption of unreasonableness.[2]

III. The Proposed Rules Should Be Modified to Clarify Certain Provisions.

In its Comments, PRIMESTAR endorsed the preemption of regulations that impose a "substantial cost" on users of small satellite antennas. Numerous commenters mirror PRIMESTAR's concern that the definition of "substantial cost" is too vague to effectively protect against burdensome regulations. In fact, regulations that hinder quick, inexpensive and hassle-free installation of small antennas are an unnecessary burden on interstate commerce.

PRIMESTAR proposed that any regulations that place more than a de minimus burden on the use of small receive-only satellite antennas should be preempted. With respect to small antennas purchased or leased by individual consumers (as opposed to

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[2] PRIMESTAR's efforts to migrate to high-power DBS have already been hampered by a recent Order issued by the Commission's International Bureau denying the request of Advanced Communications Corporation ("Advanced") to extend the time to complete its DBS system. In the Matter of Advanced Communications Corporation, DA 95-944, released April 27, 1995. Had the Bureau approved Advanced's application, the DBS channels allocated to Advanced would have been put to use to provide service to PRIMESTAR in 1996, which would have allowed PRIMESTAR to expand its DTH service. PRIMESTAR and numerous other parties have sought review of this Staff decision.

commercial entities), the de minimus threshold should be even lower. Accordingly, PRIMESTAR agrees with DIRECTV's proposal that as to antennas intended for consumer use, the proposed rules should define "substantial" to include the imposition of any costs or fees, any requirement to obtain a permit or other authorization, or any requirement to attend a hearing or meeting of any kind. See Comments, DIRECTV.

If the Commission declines to adopt the DIRECTV proposal that any costs or fees imposed on consumers' small antenna installations are unreasonable, PRIMESTAR urges the Commission to declare that the use of the price of an antenna as a basis for determining whether a local regulatory cost is "substantial" will not apply in circumstances where a consumer leases an antenna. To do otherwise would unfairly discriminate against PRIMESTAR, which does not require its customers to purchase their antennas. Therefore, if any local fees are permitted for consumer antenna installations, the Commission should clarify that, in a situation where satellite reception equipment is rented to a consumer and professionally installed, any local regulatory cost that is not de minimus as compared to the installation charges would be unreasonable.

Similarly, in its Comments PRIMESTAR proposed certain modifications to the requirement that consumers exhaust local administrative proceedings prior to initiating action with the Commission. PRIMESTAR noted that the proposed rules' 90-day waiting period would amount to an unreasonable delay and would discourage a consumer from attempting to install a satellite

antenna. PRIMESTAR urges adoption of a 30-day waiting period instead of a 90-day waiting period. In addition, PRIMESTAR submits that the 30-day waiting period should commence from the date on which the consumer initially filed an application at the local administrative level, thereby curtailing the ability of local authorities to unreasonably extend the waiting period by creating a multistep review procedure at which each step of the review would trigger an additional waiting period. By clarifying these provisions, the Commission can reduce the proposed rules' ambiguities and make their enforcement less burdensome.

IV. Conclusion

Because the Commission's proposed rules provide greater protections to satellite television consumers and providers, PRIMESTAR generally supports the proposed rules and urges the Commission to modify and clarify several aspects of the proposed rules as discussed herein and in PRIMESTAR's Comments.

Respectfully submitted,

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August 14, 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Comments of PRIMESTAR Partners L.P. has been furnished by U.S. Mail, this 14th day of August, 1995, to each of the following addressees:

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